

## **E. NEW BUSINESS**

- 1. Building Setback Permit; KPB File 2022-055  
PC Resolution 2022-19  
Property: Lot 17, Block 1, Sunny Slope Unit 1 (HM 75-33)  
Petitioner/Landowner Senugnetuk Community Property Trust**



Vicinity Map

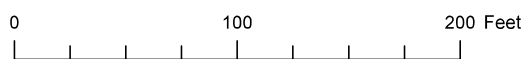


KPB File # 2022-055

S04-T06S-R14W

Diamond Ridge

4/15/2022

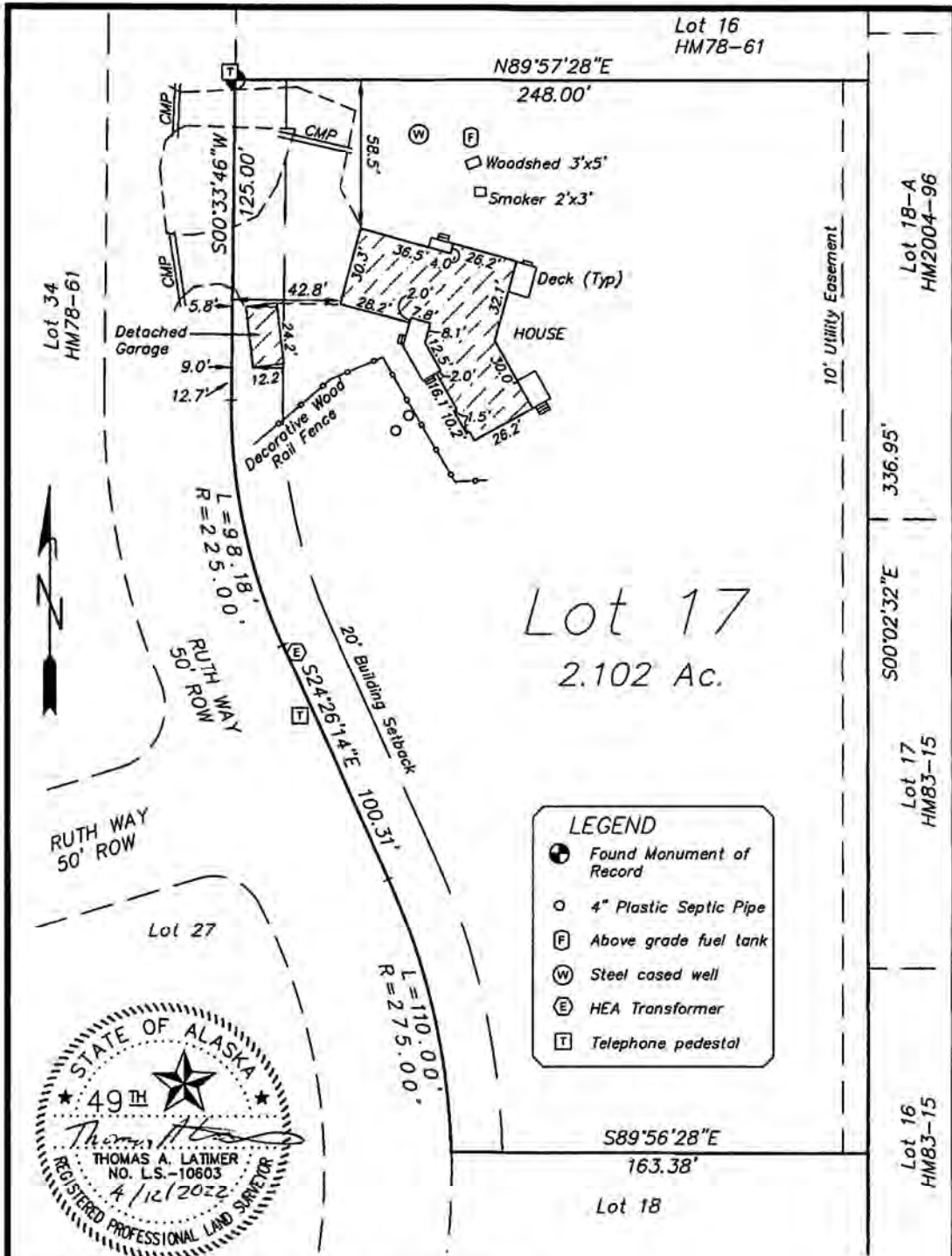




Aerial View



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



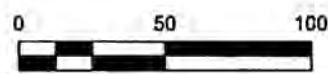
Lot 17  
2.102 Ac.

**LEGEND**

- ⊕ Found Monument of Record
- 4" Plastic Septic Pipe
- ⊞ Above grade fuel tank
- ⊙ Steel cased well
- ⊞ HEA Transformer
- ⊞ Telephone pedestal



- NOTES:**
- This survey was prepared in accordance with the ASPLS mortgage location survey standards.
  - This survey is a representation of the conditions that were found at the time the location survey was performed. This survey does not constitute a boundary survey and is subject to any inaccuracies that a subsequent boundary survey may disclose. It is the responsibility of the owner to determine the existence of any easements, covenants, or restrictions that do not appear on the recorded plat. Information contained hereon shall not be used to establish any fence, structure, or other improvements. Lot dimensions are record per the listed plat. Building dimensions and offsets are to the outer face of trim. Approximately 2' snow at time of survey which may obscure low lying improvements.
  - This survey was performed for the Senungetuk Community Property Trust and it should only be used for a single property transaction. Re-use of this drawing by the original client or by others at a later date without the express consent of the SURVEYOR is a violation of Federal Copyright law. Unless gross negligence is discovered, the liability extent of the preparer shall be limited to the amount of fees collected for services in preparation of this product.
  - No comprehensive title research was conducted in the preparation of this document. Other easements or matters affecting title may exist beyond those shown or noted hereon.



**Asbuil Survey Lot 17**  
Sunny Slope Subd Unit 1 HM75-33  
Within NW1/4, Sec. 9, T6S, R14W, S.M.,  
Kenai Peninsula Borough, Alaska  
KPB Tax ID 17352017

Prepared by: Orion Surveys 36570 Maria Rd, PO Box 15025 Fritz Creek, AK 99603 (907)399-7028 tom@orionsurveys.com	Prepared for: Senungetuk Community Property Trust 41020 Ruth Way Homer, AK 99603
--	---

4/12/2022 Scale: 1"=50' FB: 23 Job# 966

AGENDA ITEM E. NEW BUSINESS

ITEM 1. – BUILDING SETBACK ENCROACHMENT PERMIT  
LOT 17 SUNNY SLOPE SUBDIVISION UNIT 1 PLAT HM 75-33

<b>KPB File No.</b>	2022-055
<b>Planning Commission Meeting:</b>	May 9, 2022
<b>Applicant / Owner:</b>	Senungetuk Community Property Trust
<b>Surveyor:</b>	Tom Latimer / Orion Surveys
<b>General Location:</b>	Diamond Ridge / Kachemak Bay APC

<b>Parent Parcel No.:</b>	173-520-17
<b>Legal Description:</b>	Lot 17 Sunny Slope Subdivision Plat No HM 75-33
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

STAFF REPORT

**Specific Request / Purpose as stated in the petition:** The house and attached garage on this property were built in 1997 by Beachy Construction. Beachy Construction later built the detached garage in 2002. Until the recent as-built survey was completed and provided to me, no one had been aware of the encroachment of the detached garage into the building setback. The detached garage has a concrete foundation so it is not feasible that it be moved. Furthermore, the garage does not interfere with the road maintenance of Ruth Way, is not close enough to the road to create a safety hazard, and does not appear to impede sight distance or sight lines. Ruth Way is a low volume, low speed, closed-loop road used primarily by the residents who live along it.

**Site Investigation:** There do not appear to be any low wet areas or steep slopes present in the portion of the right of way adjacent to the encroachment. Some low wet areas are present on the southern portion of the lot.

Per the Google Earth street view images, there is some natural vegetation between the building and the constructed right of way. The building itself does not appear to create a line of sight issue.

Ruth Way is a right-of-way off state maintained Diamond Ridge Road. Ruth Way is a 50 foot wide right-of-way goes north from Diamond Ridge Road. The northern portion of the right-of-way loops around. The entire right-of-way is not maintained by the borough but the portion adjacent to Lot 17 is borough maintained.

**Staff Analysis:** The building setback for Lot 17 was put in place when the lot was created by Sunny Slope Subdivision Unit 1, Plat HM 75-33. A 20 foot building setback was placed along the right of ways. Per the plat there were no platted utility easements granted along the right-of-way.

Across the right-of-way is a lot with numerous improvements already in place. There is a slight curve in the right-of-way near the location of the building and several improvements have been constructed to the north.

Road maintenance ends north of the encroachment but it appears the right of way is cleared beyond. The land slopes down to the west. No low wet areas appear to be present in the building location.

Ruth Way was dedicated at a 50 foot wide right-of-way. Current KPB Code requires right-of-way widths to be a minimum of 60 feet wide. Multiple lots within the area already have developments and improvements constructed. The only way to increase the road widths in this area would be by acquiring additional right-of-way with replats. The ability to get a full 60 feet for Ruth Way for the entire portion of the right-of-way is minimal. If an attempt was made, the garage would be .8 feet from the edge of the right-of-way if 5 feet was taken from each side of the existing right-of-way.

The as-built shows a decorative wood rail fence that is also partially within the setback. The fence is an allowable improvement within the setback per KPB Code 20.90.

**Findings:**

1. Sunny Slope Subdivision Unit 1, Plat HM 75-33, created Lot 17 and created the 20 foot building setback along Ruth Way.
2. A detached garage was built in 2002 almost entirely within the setback.
3. The garage was built by the contractor that built the house.
4. Utility easements were not granted by the plat.
5. The building is within 5.8 feet of the right-of-way dedication.
6. Ruth Way is a 50 foot wide right-of-way.
7. Per KPB 20.90, "Building setback is the area of the lot where permanent structures are not allowed. The purpose of the setback is to promote safe public access, areas for emergency response, and traffic sight distance."
8. Per KPB 20.90 the definition of permanent structures as they apply to the building setback means "anything of a permanent nature that requires footings, foundations or pilings. Improvements of a minor nature that do not interfere with the sight distance from the right-of-way are allowed."
9. The right of way in this area is maintained by the Kenai Peninsula Borough.
10. The Roads Department comment was "RSA has no objection at this time."
11. There is natural vegetation between the structure and the right-of-way edge.
12. The building does not appear to create a line of sight issue looking at street views from Google.

**20.10.110. – Building setback encroachment permits.**

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

**Findings 5 and 9-12 appear to support this standard.**

2. The building setback encroachment may not interfere with sight lines or distances.

**Findings 5, 11, and 12 appear to support this standard.**

3. The building setback encroachment may not create a safety hazard.

**Findings 5 and 9-12 appear to support this standard.**

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

**KPB department / agency review:**

KPB Roads Dept. comments	RSA has no objection at this time.
SOA DOT comments	No comment
Planner –	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.
	Material Site Comments: There are not any material site issues with this proposed plat.

Code Compliance -	Reviewer: Ogren, Eric Comments: No comments. The PC has authority to approve or deny set back exceptions.
Addressing –	Reviewer: Haws, Derek Affected Addresses: 41020 RUTH WAY  Existing Street Names are Correct: Yes  List of Correct Street Names: RUTH WAY
Advisory Planning Commission	Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:  Comments: 41020 RUTH WAY will remain with lot 17. Comments from Kachemak Bay APC were not received when the staff report was prepared.

**RECOMMENDATION:**

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2022-19, subject to compliance with KPB 20.10.110 sections F and G.

**NOTE:**

**20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.**

**END OF STAFF REPORT**

**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
RESOLUTION 2022-19  
HOMER RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE TWENTY FOOT BUILDING SETBACK FOR LOT 17, SUNNY SLOPE SUBDIVISION UNIT 1 (HM 75-33), GRANTED BY SUNNY SLOPE SUBDIVISION UNIT 1 (HM 75-33); IN NE 1/4 S04, T06S, R14W; SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2022-055

WHEREAS, per KPB 20.30.240 – Building Setbacks, a minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities; and

WHEREAS, Senungetuk Community Property Trust of Homer, AK requested a building setback encroachment permit for a detached garage on said lot; and

WHEREAS, per the petition, a garage was constructed in 2002 and is located up to 14.2 feet within the 20 foot building setback adjoining Ruth Way right-of-way; and

WHEREAS, the encroaching structure does not affect sight distance along the right-of-way; and

WHEREAS, on Monday, May 9, 2022, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed exception; and

WHEREAS, the Planning Commission found that granting the building setback encroachment permit will not be detrimental to the public interest; and

WHEREAS, 20.10.110 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish building setback encroachment permits by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. Approved a permit to allow only the encroaching portion of the detached garage that extends to 14.2 feet into the 20 foot building setback adjoining Ruth Way right-of-way on the west boundary of Lot 17, Sunny Slope Subdivision Unit 1 (HM 75-33), granted by Sunny Slope Subdivision Unit 1 (HM 75-33).

Section 2. That any new, replacement, and/or additional construction will be subject to the 20-foot building setback limit.

Section 3. That the 20-foot building setback limit shall apply to the remainder of said lot.

Section 4. That a current as-built survey or sketch prepared, signed, and sealed by a licensed land surveyor showing the location of the encroachment within the building setback be attached to, and made a part of this resolution, becoming page 2 of 2.

Section 5. That this resolution is void if not recorded in the appropriate Recording District within 90 days of adoption.

Section 6. That this resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fees.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 9<sup>th</sup> DAY OF MAY, 2022.

\_\_\_\_\_  
Blair J. Martin, Chairperson  
Planning Commission

ATTEST:

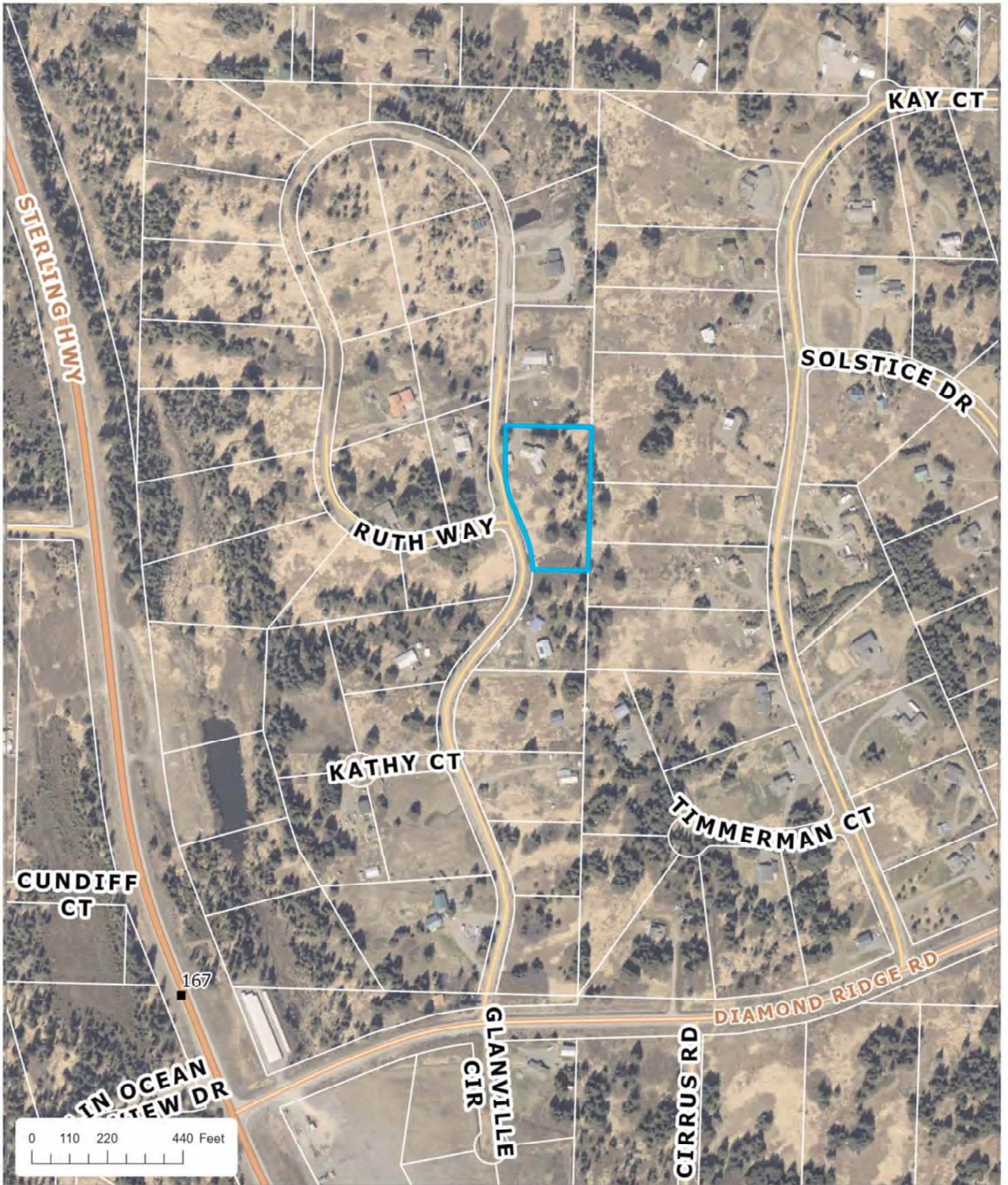
\_\_\_\_\_  
Ann Shirmberg,  
Administrative Assistant

Return to:  
Planning Department  
Kenai Peninsula Borough  
144 North Binkley Street  
Soldotna, Alaska 99669

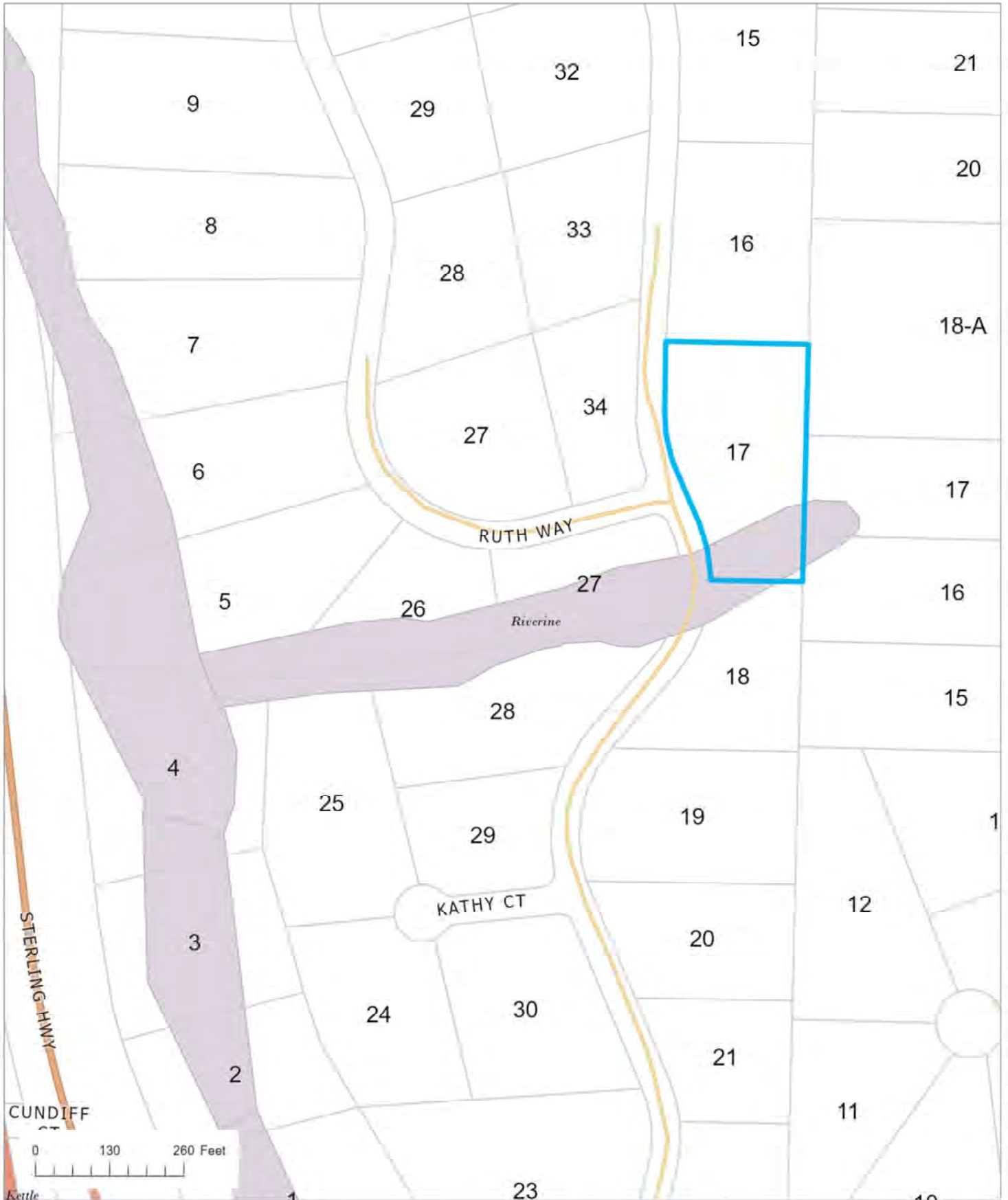


Images from Google Earth.

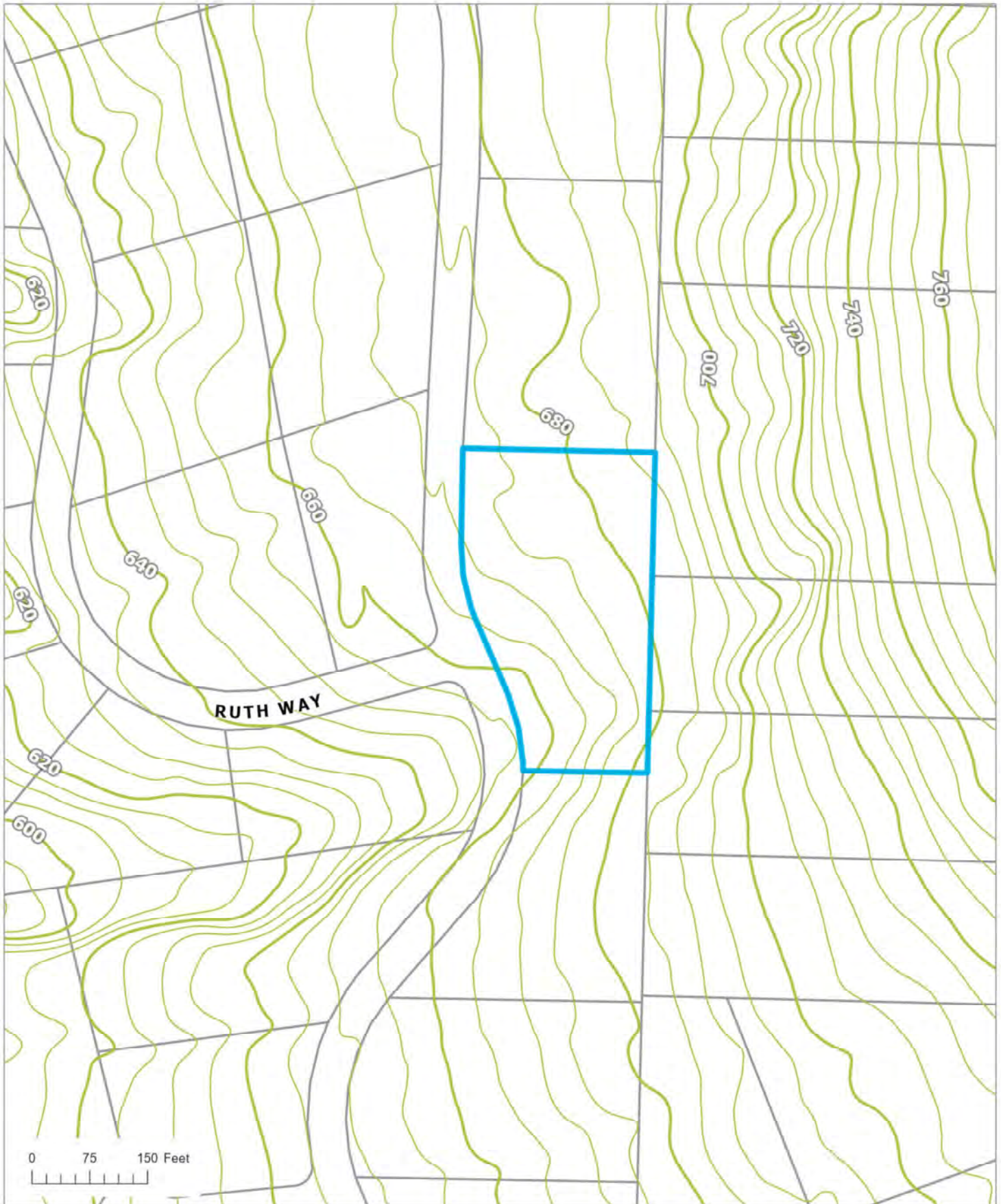




The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



The information depicted herein is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

75-83  
 (Ordinance 5110) 3rd  
 Version 11-14  
 7-23-11  
 4/03 P  
 JPA  
 11/14/11



DIAGRAM OF THE NW 1/4 OF SEC. 9  
 T6S, R14W, S. M.

SECTION LINE EASEMENT VACATION CERTIFICATE

**APPROVAL RECOMMENDATION**  
 STATE DEPARTMENT OF HIGHWAYS  
 THE VACATED EASEMENT AS SHOWN HEREON HAS BEEN IDENTIFIED BY THE SUPERVISOR OF HIGHWAYS AND IS BEING VACATED IN ACCORDANCE WITH THE CONSTITUTION OF THE STATE OF ALABAMA.  
 DATE: 11/14/11  
 STATE DIVISION OF LAND  
 THE EASEMENT SHOWN ON THIS SECTION HAS BEEN IDENTIFIED BY THE SUPERVISOR OF HIGHWAYS AND IS BEING VACATED IN ACCORDANCE WITH THE CONSTITUTION OF THE STATE OF ALABAMA.  
 DATE: 11/14/11  
 SUPERVISOR OF HIGHWAYS  
 DATE: 11/14/11  
 COUNTY COMMISSIONER  
 DATE: 11/14/11

**CERTIFICATE OF OWNERSHIP**  
 I, the undersigned, certify that I am the true and lawful owner of the above described land, and that I have no other interest therein, and that I have no other claim or demand thereon, and that I have no other interest therein, and that I have no other claim or demand thereon, and that I have no other interest therein, and that I have no other claim or demand thereon.

DATE: 11/14/11  
 SIGNATURE: [Signature]  
 TITLE: [Title]  
 COUNTY: [County]

**SURVEYOR'S CERTIFICATE**  
 I, the undersigned Registered Surveyor, hereby certify that I have surveyed and have compared the same with the original plat and find that the same are correct and true, and that I have no other interest therein, and that I have no other claim or demand thereon, and that I have no other interest therein, and that I have no other claim or demand thereon.

**NOTARY'S ACKNOWLEDGMENT**  
 Subscribed and sworn to before me this 14th day of 11th 2011.  
 Notary in and for the State of Alabama  
 My Commission Expires: 11/14/11

**PLAT APPROVAL**  
 Plat approved by the Borough Planning Commission this 11th day of 11th 2011.  
 DATE: 11/14/11  
 COUNTY: [County]



SCALE: 1" = 100'  
 SHEET NO. 1 OF 1  
 DATE: [Date]  
 DESIGNED BY: [Name]  
 CHECKED BY: [Name]  
 DRAWN BY: [Name]



**SUNNY SLOPE SUBDIVISION**  
 Located within the NE 1/4 SW 1/4 of Sec. 9, T6S, R14W, S. M. in a portion of the NE 1/4 SW 1/4 of Sec. 9, T6S, R14W, S. M. of the County of [County], State of Alabama.

**ABILITY SURVEYS**  
 Jerry Johnson, L.S.  
 11/14/11

**CURVE DATA**

NO.	ANGLE	TANGENT	CHORD	ARC
1	30° 00' 00"	288.00	576.00	349.10
2	44° 30' 00"	288.00	576.00	349.10
3	44° 30' 00"	288.00	576.00	349.10
4	44° 30' 00"	288.00	576.00	349.10
5	44° 30' 00"	288.00	576.00	349.10
6	44° 30' 00"	288.00	576.00	349.10
7	44° 30' 00"	288.00	576.00	349.10
8	44° 30' 00"	288.00	576.00	349.10

**LEADS**  
 1. 10' 11" UTILITY EASEMENT  
 2. 10' 11" UTILITY EASEMENT  
 3. 10' 11" UTILITY EASEMENT  
 4. 10' 11" UTILITY EASEMENT  
 5. 10' 11" UTILITY EASEMENT  
 6. 10' 11" UTILITY EASEMENT  
 7. 10' 11" UTILITY EASEMENT  
 8. 10' 11" UTILITY EASEMENT

To: Kenai Peninsula Borough Planning Department

Fr: Senungetuk Community Property Trust / Turid Senungetuk

Date: 4-13-2022

Re: **41020 Ruth Way, Homer, AK 99603, Sunny Slope Sub Unit 1 Lot 17 Blk 1**

This letter is to request approval for a building setback encroachment permit for Sunny Slope Sub Unit 1 Lot 17 Block 1 with an address of 41020 Ruth Way in Homer, Alaska.

Please see attached as-built survey prepared by surveyor Tom Latimer, Orion Surveys.

The house and attached garage on this property were built in 1997 by Beachy Construction. Beachy Construction later built the detached garage in 2002. Until the recent as-built survey was completed and provided to me, no one had been aware of the encroachment of the detached garage into the building setback. The detached garage has a concrete foundation so it is not feasible that it be moved. Furthermore, the garage does not interfere with the road maintenance of Ruth Way, is not close enough to the road to create a safety hazard, and does not appear to impede sight distance or sight lines. Ruth Way is a low volume, low speed, closed-loop road used primarily by the residents who live along it.

*Turid Senungetuk 4/13/22*